

IN THE  
COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
LEE FISHER  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

SANFORD P. BRODY (FORMERLY DBA SPB  
CARBURETOR COMPANY, INC.), *et al.*,

Defendants.

Case No. 240240

Judge Ralph A. McAllister

JUDGMENT ENTRY AND  
ORDER TO THE STATE AND  
DEFENDANT BRODY CONCERNING  
CIVIL PENALTY

Pursuant to the Consent Journal Entry between the State of Ohio ("State") and Defendant Sanford P. Brody ("Brody") (wherein partial settlement was referenced) as signed by the Court and subsequently filed on October 14, 1993, the parties reached agreement as to the remaining issues before the Court, *i.e.*, the payment of an appropriate civil penalty before the Court on December 14, 1993. The following Judgment Entry and Order ("Order") shall be applicable to the State and Defendant Brody and thereby resolve this matter before the Court.

I. PARTIES

A. The provisions of this Order shall apply and be binding upon the State, Defendant Brody and their affiliates, agents, assigns, associates, contractors, subcontractors, employees, engineers and any person acting in concert or privity with the people identified in this paragraph.

B. The terms and provisions of this Order do not apply to and are not

binding upon persons not a party to said Order.

## **II. SETTLEMENT OF HAZARDOUS WASTE CLAIMS**

A. Pursuant to the requirements of Ohio's hazardous waste laws, *i.e.* Chapter 3734. of the Ohio Revised Code ("RC"), Defendant Brody has agreed, and is enjoined and ordered, to properly remove and dispose of the hazardous wastes present at the property located at 6504 Carnegie Avenue, Cleveland, Cuyahoga County, Ohio (hereinafter referred to as the "Carnegie Avenue facility") in accordance with paragraph II, B, within thirty (30) days of the Court's entry of this Order. Defendant Brody has agreed, and is enjoined and ordered to pay the costs related to such removal and disposal, whatever the amount of such costs may be. Defendant Brody reserves all rights to recover from Defendant Pavel Sperk aka Paul Sperk one half (1/2) of such costs paid by Defendant Brody.

B. Within fifteen (15) days of the entry of this Order, Defendant Brody is enjoined and ordered to submit to the Ohio Environmental Protection Agency ("Ohio EPA"), for review and approval, a work-plan which includes, at a minimum, a plan to address sampling and analysis of the wastes, removal of the wastes and the remediation of any visible contamination at the Carnegie Avenue facility. Defendant is enjoined and ordered to inform the Ohio EPA district inspector five (5) days prior to entering the facility.

## **III. REMITTAL OF SETTLEMENT SUM**

A. Defendant Brody agrees, and is ordered, to pay the State a civil penalty of five thousand dollars (\$5,000.00). This amount shall be paid by delivering to the State's attorney, or his successor, three (3) certified checks for the amounts set forth in Article III, Paragraph B, made payable to "*Treasurer, State of Ohio.*"

B. The payment identified in Article III, Paragraph A, shall be made as follows: The first installment of one thousand six hundred sixty-six dollars and sixty-six cents (\$1,666.66) shall be made on or before December 14, 1994. The second installment of one thousand six hundred

sixty-six dollars and sixty-six cents (\$1,666.66) shall be made on or before December 14, 1995. The third installment of one thousand six hundred sixty-six dollars and sixty-seven cents (\$1,666.67) shall be made on or before June 14, 1996.

**IV. SATISFACTION OF CIVIL LIABILITY**

Compliance with the terms of this Order shall constitute full satisfaction of any civil liability by Defendant Brody for all claims under such laws alleged in the Complaint.

**V. STATE'S RESERVATION OF CLAIMS**

A. This agreement shall not be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, or to seek any relief for the types of claims or conditions alleged in the Complaint which occur after the Court's entry of this Order.

B. The State herein specifically reserves the right to bring any legal, equitable or other action against any person including, but not limited to, Defendant Brody pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601, et seq. and/or Ohio Revised Code Section 3734.20 through 3734.27 to require performance of removal, remedial or corrective actions at the Carnegie Avenue facility pursuant to those statutes which are not conducted under the terms of this Order.

**VI. DEFENDANT BRODY'S RESERVATION OF RIGHTS**

Defendant Brody shall retain the right, and the State agrees to same, to seek one half (1/2) the cost of removal and disposal as set forth in the October 14, 1993 Entry from Defendant Pavel Sperk aka Paul Sperk.

**VII. COMPLIANCE WITH APPLICABLE LAWS**

Nothing herein shall affect Defendant Brody's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

**VIII. REPORTING TO THE COURT**

Within thirty (30) days of the Court's entry of this Order, Defendant Brody is ordered to report to Court the progress made regarding the removal and disposal at the Carnegie Avenue facility.

**IX. EFFECT UPON OTHER ACTIONS**

Nothing in this Order shall be construed to relieve Defendant Brody of the obligation to comply with all applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim against said Defendant with regard to any person not a party to this Order.

**X. OHIO EPA MAILING ADDRESS**

Any and all documentation, plans or reports required to be submitted to Ohio EPA pursuant to this Order, shall be submitted to "Ohio EPA, Division of Hazardous Waste Management, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087, Attn: Marlene Emanuelson, or her successor." In addition, the cover letter which accompanies such submittal shall be carbon copied to John Schierberl and mailed to him, or his successor, at "Ohio EPA, Division of Hazardous Waste Management, Compliance Monitoring & Enforcement Section, 1800 WaterMark Drive, P.O. Box 1049, Columbus, OH 43266-0149"

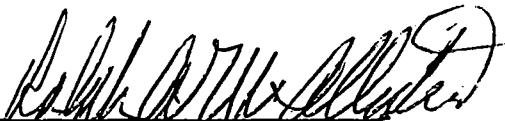
It Is Hereby Ordered that the Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Order.

It Is Hereby Ordered that Defendant Brody is to pay one half (1/2) of the Court's costs

associated with the case *sub judice* through the entry of this Order.

No further entry is required. Entered this 16<sup>th</sup> day of May, 1994.

COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

  
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Judge Ralph A. McAllister

RECEIVED FOR FILING

MAY 20 1994

BY  CLERK  
DEP.